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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JASBIR SANGHA,

**Plaintiff,**

vs.

MEHUL PATEL aka MIKE PATEL;  
CHIRAG PATEL aka CHUCK PATEL;  
JAGMOHAN DHILLON; DHILLON  
MANAGEMENT INC., a California  
corporation; DHILLON, INC., a Texas  
corporation; DHILLON GROUP, LLC,  
a Texas limited liability company;  
HARMINDER DHILLON;  
GURENDER S. SAHANI;  
TARLOCHAN S. KATARIA; NEW  
HOPE HOSPITALITY, LLC,  
STARLITE HOTELS, LLC, a Texas  
limited partnership; NEWCREST  
HOTELS, LTD., a Texas limited  
partnership; CORSICANA LODGING,  
LLC, a Texas limited liability company;  
and DOES 1 through 10, inclusive,

#### Defendants.

CASE NO.: 2:11-cv-06970-RGK-VBKx

**DEFENDANT JAGMOHAN  
DHILLON'S NOTICE OF MOTION  
AND MOTION TO DISMISS FIRST  
AMENDED COMPLAINT FOR  
FAILURE TO STATE A CLAIM;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF;**

[Fed. R. Civ. P. 12(b)(6) and 9(b)]

## Hearing

Date: November 7, 2011

Time: 9:00 a.m.

## Courtroom: 850

Action Filed: April 18, 2011  
Removal Date: August 24, 2011  
Trial Date: None set

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Please take notice that on November 7, 2011 at 9:00 a.m. in Courtroom 850 of  
3 the above-captioned court located at 255 East Temple Street, Los Angeles, CA  
4 90012, Defendant Jagmohan Dhillon ("Dhillon"), will and hereby does move  
5 pursuant to Federal Rule of Civil Procedure 12(b)(6) and 9(b) to dismiss the first,  
6 second, third, fourth, and fifth causes of action contained in the First Amended  
7 Complaint filed by Plaintiff Jasbir Sangha ("Plaintiffs").

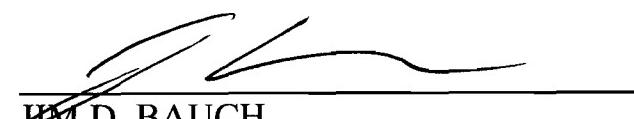
8 Good cause exists to grant this motion because the First Amended Complaint  
9 fails to allege sufficient facts to state a cause of action, and fails to allege fraud with  
10 particularity.

11 This motion is based on this Notice of Motion and Motion, the attached  
12 Memorandum of Points and Authorities, the First Amended Complaint, and such  
13 further evidence and arguments as may be presented at or before the hearing on this  
14 matter.

15 This motion is made following the conference of counsel pursuant to Central  
16 District Local Rule 7-3, which took place on September 28, 2011.

17  
18 DATED: October 3, 2011

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20  
21   
22 JIM D. BAUCH

23 Attorneys for Defendants Jagmohan  
Dhillon, Gurender S. Sahani, and Tarlochan  
S. Kataria

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**TABLE OF CONTENTS**  
3

3	I.	Introduction/Factual Summary.....	1
4	II.	Legal Standard For Motion to Dismiss .....	1
5	III.	Plaintiff's First and Third Causes of Action Fail to State a Claim Against Dhillon Because Plaintiff Has Not Alleged Any Fraud By Dhillon.....	2
6	A.	The Allegations Are Not Made With Particularity As To Any Defendant.....	3
7	B.	The Allegations Are Not Made With Particularity As To Dhillon .....	4
8	IV.	The Second Cause of Action Fails .....	5
9	V.	Plaintiff's Fourth, Fifth, and Sixth Causes of Action Fail .....	5
10	VI.	Plaintiff's Business and Professions Code § 17200 Claim Fails .....	5
11	VII.	Conclusion.....	6
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

1                   **TABLE OF AUTHORITIES**

2                   **CASES**

3 <i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007) .....	1
4 <i>Desaigoudar v. Meyercord</i> , 223 F.3d 1020 (9 <sup>th</sup> Cir. 2000).....	2
5 <i>Goldrich v. Natural Y Surgical Specialties</i> , 25 Cal.App.4th 772 (1994).....	2
6 <i>Lazar v. Superior Court</i> , 12 Cal.4th 631 (1996) .....	2
7 <i>Moore v. Brewster</i> , 96 F.3d 1240 (9 <sup>th</sup> Cir. 1996) .....	2
8 <i>Neu-Visions Sports, Inc. v. Soren/McAdam/Bartells</i> ,	
9                    86 Cal.App.4th 303 (2000).....	3
10 <i>Nibbi Brothers, Inc. v. Home Fed. Sav. &amp; Loan Ass'n</i> ,	
11                  205 Cal.App.3d 1415 (1988).....	3
12 <i>Sanford v. MemberWorks, Inc.</i> , 625 F.3d 550 (9 <sup>th</sup> Cir. 2010).....	4
13 <i>Small v. Fritz Companies, Inc.</i> , 30 Cal.4th 167 (2003).....	2
14 <i>Williams v. WMX Technologies, Inc.</i> , 112 F.3d 175 (5 <sup>th</sup> Cir. 1997) .....	2

15                   **STATUTES**

16                  Fed. R. Civ. P. 9(b).....	2
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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                   I. Introduction/Factual Summary

3                   Dhillon brings this motion to dismiss Plaintiff's specified causes of action for  
4 the following reasons:<sup>1</sup>

5                   Plaintiff's first three claims seek rescission of a mutual general release that  
6 Plaintiff alleges was fraudulently induced. Plaintiff's claims, However, fail to  
7 adequately allege fraud. Plaintiff alleges misrepresentations by a different  
8 defendant, Mehul Patel, in a telephone call and at a meeting in California. But  
9 Dhillon is not alleged to have been present at that meeting or to otherwise have  
10 made any representations in connection with the release. Moreover, even if the  
11 alleged representations of Mehul Patel could be attributed to Dhillon, they are still  
12 insufficient as they amount to nothing more than a prediction about the equity of  
13 unspecified pieces of property, which are mere opinions and not actionable fraud.

14                  Plaintiff's remaining claims relate to the underlying real estate transactions.  
15 But Plaintiff admits that he released these claims, and so they must fall with his  
16 rescission claims.

17

18                  II. Legal Standard For Motion to Dismiss

19                  A complaint must provide "more than labels and conclusions"; it must make  
20 "factual allegations" that "raise a right to relief above the speculative level" to the  
21 "plausible" level. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 n.3, 127  
22 S.Ct. 1955, 1965 n.3 (2007).

23

24

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25                  <sup>1</sup> Dhillon previously moved to dismiss the original Complaint, which was set for  
26 hearing on October 3, 2011. Plaintiff filed his First Amended Complaint on  
27 September 16, 2011. The Court has taken the original motion to dismiss under  
28 submission.

1       Furthermore, where a complaint alleges fraud, it must “state with particularity  
 2 the circumstances constituting fraud. . . .” Fed. R. Civ. P. 9(b). Fraud must be pled  
 3 “with a high degree of meticulousness.” *Desaigoudar v. Meyercord*, 223 F.3d 1020,  
 4 1022-23 (9<sup>th</sup> Cir. 2000).

5       In diversity cases, a federal court applies state law as to the substantive  
 6 elements of fraud, but those elements must be pleaded with the specificity required  
 7 by federal law. *See Moore v. Brewster*, 96 F.3d 1240, 1245-46 (9<sup>th</sup> Cir. 1996).

8

9       III. Plaintiff's First and Third Causes of Action Fail to State a Claim Against  
 10       Dhillon Because Plaintiff Has Not Alleged Any Fraud By Dhillon

11       The First Amended Complaint’s (“FAC”) First Cause of Action for false  
 12 promise and Third Cause of Action for rescission based on fraud seek to rescind a  
 13 release of liability that Plaintiff claims he was fraudulently induced to give the  
 14 Defendants. However, Plaintiff fails to allege fraud adequately against any  
 15 defendant, and in particular fails to allege any fraudulent representations made by  
 16 Dhillon.

17       Under California law, the elements of an action for fraud are: (1)  
 18 misrepresentation; (2) scienter (knowledge of falsity); (3) intent to defraud; (4)  
 19 justifiable reliance; and (5) resulting damage. *See Small v. Fritz Companies, Inc.*, 30  
 20 Cal.4th 167, 174 (2003).

21       Furthermore, under both California law and Federal Rule of Civil Procedure  
 22 9(b), Plaintiff must specifically state the time, place or manner of the purported  
 23 fraudulent acts each defendant committed. *See Williams v. WMX Technologies, Inc.*,  
 24 112 F.3d 175, 178 (5<sup>th</sup> Cir. 1997) (“the who, what, when, and where must be laid out  
 25 before access to the discovery process is granted.”); *Lazar v. Superior Court*, 12  
 26 Cal.4th 631, 645 (1996) (plaintiff must plead facts that “show how, when, where, to  
 27 whom, and by what means the representations were tendered”); *Goldrich v. Natural*  
 28 *Y Surgical Specialties*, 25 Cal.App.4th 772, 783 (1994) (where plaintiff merely

1 alleged that defendants “falsely and fraudulently” represented that their products  
 2 were safe, court found pleading failed to meet the required specificity for fraud since  
 3 it could not be determined what was said or by whom or in what manner).

4 Plaintiff has failed to do so. The FAC’s allegations are insufficient for two  
 5 independent reasons.

6           A.     *The Allegations Are Not Made With Particularity As To Any*  
 7                   *Defendant*

8           The supposedly false representations by M. Patel and C. Patel are not pled  
 9 with particularity. Plaintiff alleges repeatedly that Mehul Patel “promised that  
 10 Sangha would receive a promissory note made by Dhillon, Sahani and Kataria in the  
 11 amount of \$173,000 for the balance of Sangha’s investment in the Corsicana  
 12 properties, which would be secured by second trust deeds on Dhillon’s properties in  
 13 Sherman and Sweetwater that had sufficient equity to cover the October 2, 2009  
 14 Promissory Note. That representation was false.” FAC, ¶ 61.

15          But Plaintiff admits that he did receive a promissory note, *see* FAC ¶ 64, so  
 16 the only basis for his allegation that Mehul Patel’s representations were false is  
 17 Plaintiff’s claim that the note was “worthless,” which rests on Plaintiff’s allegation  
 18 that he “is informed and believes that Mehul Patel knew” that two deeds of trust had  
 19 been recorded in September 2009. FAC, ¶ 61.

20          This is insufficient to support a claim for fraud. As the events of recent years  
 21 have amply demonstrated, property values can change quickly, and properties that  
 22 have owner equity today can be “underwater” tomorrow. Any representations as to  
 23 the equity of the properties or their ability to secure the note are not actionable. *See*  
 24 *Nibbi Brothers, Inc. v. Home Fed. Sav. & Loan Ass’n*, 205 Cal.App.3d 1415, 1423  
 25 (1988) (“[P]redictions as to future events, or statements as to future action by some  
 26 third party, are deemed opinions, and not actionable fraud.”) (internal quotation  
 27 marks omitted); *Neu-Visions Sports, Inc. v. Soren/McAdam/Bartells*, 86 Cal.App.4th  
 28 303, 308 (2000) (“Representations of value are opinions.”)(citation omitted).

1                   B.     *The Allegations Are Not Made With Particularity As To Dhillon*

2       Even assuming that the allegations regarding the supposedly fraudulently  
 3 induced release were sufficient against Mehul Patel – which they are not, as shown  
 4 above – they fail to establish any fraudulent conduct by Dhillon.

5       Nowhere does Plaintiff allege that *Dhillon* made any false representations to  
 6 Plaintiff to obtain the release. The FAC tries to blur together all the defendants  
 7 under the generic title “Defendants,” but this is insufficient. *See Sanford v.*  
 8 *MemberWorks, Inc.*, 625 F.3d 550, 558 (9<sup>th</sup> Cir. 2010) (“[t]o avoid dismissal for  
 9 inadequacy under Rule 9(b), [the] complaint would need to state the time, place and  
 10 specific content of the false representations *as well as the identities of the parties to*  
 11 *the misrepresentation.*”) (alterations in original; internal quotation marks omitted  
 12 and emphasis added).

13      More importantly, it is clear that Dhillon is not alleged to have made any of  
 14 the supposedly fraudulent inducements to the release. The FAC repeatedly  
 15 identifies Mehul Patel as the person to whom Plaintiff spoke regarding the release  
 16 and promissory note. *See* FAC ¶¶ 59 (“Mehul Patel called Sangha. . . .”); 63  
 17 (“Mehul Patel came to Los Angeles to meet again with Sangha. . . . Mehul Patel  
 18 affirmed his promises and representations. . . .”).

19      Plaintiff attempts to implicate Dhillon by alleging that Mehul Patel was acting  
 20 on Dhillon’s behalf, but the only support offered for that allegation is that Mehul  
 21 Patel allegedly said so. There is no allegation that Dhillon ever made any  
 22 representations to Plaintiff regarding the release and promissory note or the equity in  
 23 the properties, or that he even knew about, much less authorized or ratified, any such  
 24 representations by Mehul Patel.

25      Accordingly, the First and Third Causes of Action must be dismissed.

1     IV. The Second Cause of Action Fails

2         The Second Cause of Action also seeks to rescind the release agreement, on  
3         the purported grounds of “failure of consideration.” However, that cause of action is  
4         based on Plaintiff’s assertion that “[t]he October 2, 2009 Promissory Note secured  
5         by the Sherman and Sweetwater properties was a material part of the consideration  
6         for the Release.” FAC, ¶ 74.

7         Plaintiff’s failure of consideration theory is without merit. Even though  
8         Plaintiff alleges that there was a written release agreement, *see* FAC ¶ 64, he does  
9         not identify any provisions in the Mutual Release that condition its enforceability on  
10         the Note or the equity in the properties. Indeed, he does not allege that the Mutual  
11         Release was breached at all.

12

13     V. Plaintiff’s Fourth, Fifth, and Sixth Causes of Action Fail

14         Plaintiff’s fourth, fifth, and sixth causes of action, for fraud , breach of  
15         fiduciary duty, and fraudulent concealment, concern the supposed “underlying  
16         fraud” that was the subject of the release. These claims fail.

17         Plaintiff admits that he gave the defendants a release of liability on these  
18         claims. *See* FAC, ¶ 65. Accordingly, Plaintiff’s Fourth, Fifth, and Sixth Causes of  
19         Action are dependent on his first three causes of action for rescission. Without a  
20         rescission of the release, the fourth through sixth causes of action are barred.  
21         Because, as shown in the preceding sections, the rescission claims fail, so too must  
22         these claims.

23

24     VI. Plaintiff’s Business and Professions Code § 17200 Claim Fails

25         The Seventh Cause of Action for Unfair Business Practice under California  
26         Business and Professions Code § 17200 is expressly linked to the previous claims  
27         for fraud and provides no further allegations. *See* FAC, ¶¶ 104-106. Accordingly, it  
28         fails for the same reasons as the prior claims.

1 VII. Conclusion

2 Based on the aforementioned arguments, as well as arguments raised during  
3 the hearing on this motion, Dhillon respectfully requests that the Court grant this  
4 motion and dismiss Plaintiff's first, second, third, fourth, fifth, sixth, and seventh  
5 causes of action against Dhillon.

6

7 DATED: October 3, 2011

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